

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

IN RE:)	
)	Case No.: 17-30204
DIABETES ENDOCRINOLOGY & METABOLISM ASSOCIATES, PA)	Chapter 11
)	
Debtor(s))	

MOTION TO DISMISS

The Office of the United States Bankruptcy Administrator for the Western District of North Carolina ("Bankruptcy Administrator") moves the Court for an Order dismissing this proceeding and says:

1. This is a Chapter 11 proceeding in which a voluntary petition was filed on February 6, 2017.
2. On February 7, 2017, an Operating Order was entered in this case. That Order provided, in part, that the Debtor timely file Monthly Status Reports, timely pay Chapter 11 quarterly fees, and timely file a Plan of Reorganization ("Plan") and a Disclosure Statement within one hundred twenty (120) days of the Order for Relief.
3. Pursuant to the Operating Order, Monthly Status Reports ("Report(s)") are due within thirty (30) days following the end of the calendar month. The Debtor filed its Reports for March, April and May 2017 on August 1, 2017.
4. The Debtor's Reports for February through May 2017 show the following:
 - a. February 2017
 - i. Affirmation number 3 has been checked "No" for having timely filed all tax returns and payments made.
 - b. March 2017
 - i. The Debtor lists accrued post-petition liabilities to multiple entities totaling \$20,144.23, which includes post-petition payroll taxes totaling \$2,408.20.
 - ii. Affirmation number 3 has been checked "No" for having timely filed all tax returns and payments made.

- iii. Affirmation number 4 has been checked “No” for having paid or deposited all post-petition taxes into a designated tax account.

c. April 2017

- i. The Debtor appears to have failed to report all of the disbursements paid for the month of April. The Cash Receipts and Disbursements page show the Debtor disbursing \$8,251.09; however, the bank statements reflect total debits of \$8,951.09.
- ii. The Debtor lists accrued post-petition liabilities to multiple entities totaling \$33,800.96, which includes post-petition payroll taxes totaling \$3,589.87.
- iii. Affirmation number 3 has been checked “No” for having timely filed all tax returns and payments made.
- iv. Affirmation number 4 has been checked “No” for having paid or deposited all post-petition taxes into a designated tax account.

d. May 2017

- i. The Debtor appears to have failed to report all of the disbursements paid for the month of May. The Cash Receipts and Disbursements page show the Debtor disbursing \$5,440.46, however, the bank statements reflect total debits of \$8,437.19.
- ii. The Debtor lists accrued post-petition liabilities to multiple entities totaling \$49,363.25, which includes post-petition payroll taxes totaling \$4,761.89.
- iii. Affirmation number 3 has been checked “No” for having timely filed all tax returns and payments made.
- iv. Affirmation number 4 has been checked “No” for having paid or deposited all post-petition taxes into a designated tax account.

- 5. As of the filing of this Motion, the Debtor has not filed a Report for June 2017.
- 6. The Debtor owes quarterly fees for the second quarter of 2017, which were due July 31, 2017.
- 7. The Debtor’s Plan and Disclosure Statement were due on June 6, 2017. As of the date of this Motion, the Debtor has not filed a request for extension of time to file the Plan and Disclosure Statement.

8. Cause exists to dismiss the Debtor's case under 11 U.S.C. § 1112(b) that provides "the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause" Cause includes:
- a. Substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation pursuant to 11 U.S.C. § 1112(b)(4)(A).
 - b. Failure to comply with an order of the court pursuant to 11 U.S.C. § 1112(b)(4)(E).
 - c. Unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter pursuant to 11 U.S.C. § 1112(b)(4)(F).
 - d. Failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief pursuant to 11 U.S.C. § 1112(b)(4)(I).
 - e. Failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court pursuant to 11 U.S.C. § 1112(b)(4)(J).
 - f. Failure to pay any fees or charges required under chapter 123 of title 28 pursuant to 11 U.S.C. § 1112(b)(4)(K). See 28 U.S.C. § 1930(a)(6) and (a)(7).
9. Quarterly fees are due pursuant to 28 U.S.C. § 1930(a)(6) which provides, in part, that "In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. . . ."

Wherefore, the undersigned moves the Court to dismiss this case and for such other and further relief as the Court deems just and proper.

Dated: August 8, 2017.

/s/ Alexandria P. Kenny
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CERTIFICATE OF SERVICE

The undersigned certifies that the pleading(s) or papers(s) to which this Certificate is affixed was served upon the party(s) to this action listed below by depositing a copy of the same, enclosed in a first-class postpaid, properly addressed wrapper, in a Post Office or official depository under the exclusive care and custody of the United States Postal Service and/or by means of the Electronic Filing System of the Bankruptcy Court on or before August 8, 2017.

Diabetes Endocrinology & Metabolism Associates, PA
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Dennis M. O'Dea
- Served Electronically -

/s/ Alexandria P. Kenny
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